

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Huey Jiun NGO <i>et al.</i>	Confirmation No.: 6314
Application No.: 10/758,768	Group Art Unit: 2167
Filed: January 16, 2004	Examiner: Bromell, Alexandria Y
Attorney Docket No.: SKY03007	

For: METHOD AND SYSTEM FOR MOBILE TELEMETRY DEVICE
PRIORITIZED MESSAGING

Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed June 11, 2010.

I. STATUS OF THE CLAIMS

Claims 1-25 are pending in this appeal. No claim is allowed. This appeal is therefore taken from the final rejection of claims 1-25 on October 15, 2009.

II. GROUND S OF REJECTION TO BE REVIEWED

Claims 1-22 and 24 were rejected for obviousness under 35 U.S.C. §103(a) based on *Duske, Jr. et al.* (US 6,992,991) in view of *Hanson et al.* (US 2003/0120811).

Claims 23 and 25 were rejected for obviousness under 35 U.S.C. §103(a) based on *Duske, Jr. et al.* (US 6,992,991) and *Hanson et al.* (US 2003/0120811) in view of *Klein* (US 6,178,523).

III. ARGUMENT

Appellants maintain and incorporate the positions presented in the Appeal Brief filed March 15, 2010, but present further refutation of certain assertions presented in the Examiner's Answer.

Regarding the combination of *Duske, Jr. et al.* and *Hanson et al.* (which Appellants maintains fails to disclose the storage of information in response to priority level indicators and that the references constitute nonanalogous arts), the Examiner asserted, at page 23 of the Answer, that “Hanson teaches a method of processing transactions within a queue based on priority, where priority may be established using weighting factors” and, at page 25 of the Answer, that the references constitute analogous art “because they are from the same field of endeavor of providing a user with mobile communication.” Still further, at page 24, the Examiner has now asserted that *Hanson et al.*, itself, “could” have been applied to anticipate the instant claims.

With regard to whether *Hanson et al.*, itself, “could” have been applied to anticipate the instant claims, the fact is that there is no rejection under 35 U.S.C. §102, of record, and Appellants should not be obligated to speculate such a “rejection.” Nonetheless, *Hanson et al.* does not anticipate the instant claimed subject matter for the same reason it is not applicable to the rejection, of record, under 35 U.S.C. §103(a), i.e., it does not teach the storage of information in response to priority level indications.

The disclosure of a method of processing transactions within a queue based on priority, where priority may be established using weighting factors, by *Hanson et al.*, does not constitute a

teaching of “storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication” or “storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication,” as in claim 1, for example. The concern of *Hanson et al.* is with **maintaining connections to applications** to which mobile devices may be connected. It is not concerned with the type of priority and data structures, as those claimed, viz., “for prioritizing transmission of messages from a telemetry device.” *Hanson et al.* does not **prioritize transmission of messages** and nothing therein, directed to maintaining connections to applications connected to a mobile device, is suggestive of prioritizing the transmission of messages. Assigning priority to applications in *Hanson et al.*, as in paragraph [0089] is irrelevant to prioritizing **transmission of messages**, as claimed. Thus, not only does *Hanson et al.* fail to fill in the gaps of *Duske, Jr. et al.*, but it is not within the same field of endeavor as either *Duske, Jr. et al.* or the instant claimed subject matter. The mere fact that *Duske, Jr. et al.* and *Hanson et al.* may relate, generally, to mobile communications does not necessarily constitute analogous arts because both *Duske, Jr. et al.* and the instant claimed subject matter are directed to transporting messages between mobile devices, while *Hanson et al.* is concerned with maintaining connections to applications to which mobile devices may be connected. In any event, *Hanson et al.* is unrelated to the particular problem with which Appellants were concerned, viz., prioritizing the transmission of messages. Therefore, the person of ordinary skill in the art would not have looked to *Hanson et al.* for any teaching relative to the prioritization of the transmission of messages.

At page 25 of the Answer, the Examiner asserted, responsive to Appellants’ argument that *Hanson et al.* is not concerned with the same type of priority and data structures as those claimed,

that, given the Examiner's broadest reasonable interpretation, *Hanson et al.* is concerned with the same type of priority and data structures as those claimed because the claims do not specify more than a "telemetry device." Appellants respectfully disagree.

The claims do recite a method, telemetry device, and computer-readable medium "for **prioritizing transmission of messages** from a telemetry device." Since *Hanson et al.* is not directed to prioritizing transmission of messages, the Examiner's interpretation is an unreasonable one. While the Examiner cites paragraph [0030] of *Hanson et al.*, wherein transactions are generated into messages, to whatever extent those "messages" can reasonably be interpreted as the claimed messages, these messages of *Hanson et al.* are not transmitted in any "prioritized" manner. Rather, the "priority" with which *Hanson et al.* is concerned is in assigning priority of applications.

At pages 27-31 of the Answer, the Examiner cited paragraph [0030] of *Hanson et al.* for system transactions that are transmitted into messages in order to track and store transaction state, and cited paragraphs [0089] and [0175] for "low priority dispatch queues 510 can have a weight factor of 4, and medium priority queues can have a weight factor of 8. High priority RPC calls do not, in this example, use weight factors because they are executed immediately as they are parsed." However, execution of Remote Procedure Call protocol in accordance with queue priority so as to allow Mobile End Systems to disconnect, go out of range, or suspend operation without losing active network sessions, does not constitute **first and second priority level indications** such that there is a "storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication" and "storing the second information element in a second data structure

in the telemetry device when it is determined that the second information element includes the second priority level indication,” as in claim 1, for example.

At pages 31-32 of the Answer, the Examiner asserted *Hanson et al.* teaches that “messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175]” and that Fig. 9 “shows that queues are created with different priority levels where the separate queues are separated data structures. The priority of information elements determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.” The Examiner’s analysis is, respectfully, in error.

Taking claim 1 as exemplary, each of the first and second information elements are first stored in a log in the telemetry device. The, after storage, it is determined whether the first and second information elements include, respectively, a first priority level indication and a second priority indication. This is different than the Examiner’s analysis of *Hanson et al.*, wherein the information elements are stored in accordance with their priority level, i.e., it must first be known what the priority level is before storing, so that the information element may be stored in the proper queue. Therefore, unlike the instant claimed subject matter, *Hanson et al.* does not first store the elements in a log and then, after storage, determine whether the information elements include specific priority level indications. Thus, *Hanson et al.* does not teach or suggest the instant claimed subject matter, either alone or in combination with *Duske, Jr. et al.*

With regard to the Examiner’s assertion, at pages 32-33 of the Answer, that *Duske, Jr. et al.* and *Hanson et al.* constitute analogous art, Appellants rely on their arguments in the principal

Brief and *supra*, establishing that *Hanson et al.* is nonanalogous art and hence not combinable with *Duske, Jr. et al.*

As to the Examiner's argument, at pages 33-34 of the Answer, that the references would have been combined "in order to efficiently manage data message transmissions" and "in order to store individual messages according to their discrete priority," Appellants respectfully disagree.

The combination of *Duske, Jr. et al.* and *Hanson et al.* would result, at best, only in a plurality of queues having varying priorities based on assigned configuration parameters regarding associations between a Mobile End System and a Mobile Management Server, with such queues having no connection, or relevance, to the message logs maintained and templates defining the contents of a message of *Duske, Jr. et al.* The priority queues of *Hanson et al.* have no connection with predetermined priorities at which messages using a template should be sent, as disclosed in *Duske, Jr. et al.* Therefore, the skilled artisan would not have sought to modify the system of *Duske, Jr. et al.* with the priority queues of *Hanson et al.*

Moreover, the Examiner's rationale regarding combining the references "in order to efficiently manage data message transmissions" and "in order to store individual messages according to their discrete priority," are mere general allegations, at best, falling far short of the "articulated reasoning with some rational underpinnings" required by the U.S. Supreme Court, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385(2007), since "efficient" management fails to explain exactly why and how the skilled artisan would have modified one reference in view of the other, and storing messages according to their discrete priority fails to explain how one would arrive at the instant claimed subject matter where information elements are first stored and, then, after storage, a determination of a priority indication level is made.

Accordingly, because no *prima facie* case of obviousness has been established with regard to the instant claims subject matter, reversal, by the Honorable Board, of the Examiner's rejections of claims 1-25 under 35 U.S.C. §103(a) is respectfully solicited.

IV. CONCLUSION AND PRAYER FOR RELIEF

Appellants, therefore, request the Honorable Board to reverse each of the Examiner's rejections.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

July 29, 2010
Date

/Phouphanomketh Ditthavong/
Phouphanomketh Ditthavong
Attorney for Applicant(s)
Reg. No. 44658

Errol A. Krass
Attorney for Applicant(s)
Reg. No. 60090

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9952
Fax (703) 519-9958